

West Virginia Ethics Commission



How to Obtain an Employee Exemption before Looking for a New Job

The Ethics Act prohibits full-time state, county and municipal public officials and employees from seeking employment with, or being employed by, a person or business who:

- had a matter on which the official or employee, or a subordinate, is known to have taken regulatory action within the preceding 12 months, or
- has a matter before the agency on which he/she is working, or a subordinate is known by him/her to be working, or
- is a vendor to the agency where the official serves, or the public employee is employed, and the official or employee, or a subordinate, exercises authority or control over a public contract with that vendor.

For purposes of this provision, “employment” includes working as an independent contractor. A “subordinate” includes only those agency personnel over whom the public official or employee has supervisory responsibility.

How do officials and employees apply for an exemption?

Before an official or employee begins his/her search for a new job with a vendor or regulated business, he/she must apply to the Ethics Commission for an “employment exemption.”

A request for an exemption must be submitted in writing to the Commission’s Executive Director, and must contain:

- (1) The name, address and phone number of the governmental agency by which he/she is employed;

(2) His/her job title and the name of his/her immediate supervisor;

(3) Facts sufficient to support a finding that he/she would be adversely affected if he/she is prohibited from seeking employment with regulated persons or vendors over whom he/she or a subordinate either currently exercises control or have exercised control in the past 12 months, and

(4) A statement that, if the temporary exemption is granted, he/she will provide a copy of the temporary exemption to the head of the agency within two business days of receipt of the temporary exemption.

What does it mean “to take regulatory action”?

The term “regulate” generally refers to the act or process of controlling by rule or restriction.

Some examples of persons who regulate include local public health department employees who inspect restaurants. At the state level, it includes a person who has authority to approve or deny a license or permit or one who inspects facilities to ensure compliance with state or federal laws.

What does it mean to “exercise authority or control” over a contract with a vendor?

To “exercise authority or control” over a public contract with a vendor to the agency where the official serves or the employee is employed includes:

- (1) Drafting bid specifications or requests for proposals;
- (2) Recommending selection of the vendor;
- (3) Conducting inspections or investigations;
- (4) Approving the method or manner of payment to the vendor;
- (5) Providing legal or technical guidance on the formation, implementation or execution of the contract, or
- (6) Taking other non-ministerial action which may affect the financial interests of the vendor.

What does it mean to “seek employment”?

To “seek employment” means:

- to respond to unsolicited offers of employment, or

- to contact a potential employer, directly or indirectly, in furtherance of obtaining employment.

How are employment exemption requests processed?

Within 10 business days of the receipt of the exemption request, the Commission's Executive Director or Chairperson will grant or deny it. Temporary exemptions are effective for 30 days. If a temporary exemption is denied, the denial may be appealed to the Commission within 10 business days of receipt of the denial.

The Ethics Commissioners will consider whether to ratify a temporary employment exemption within 45 days of receipt of the exemption request. Commissioners also will consider appeals of denials of exemptions within 45 days of receipt of the appeal.

Exemption requests will appear on Ethics Commission public meeting agendas and will include the requester's name and job title.

How does an exemption affect the official's or employee's job duties?

A full-time public official or employee may not take personal regulatory action on a matter affecting a person by whom he/she is employed or with whom he/she is seeking employment or has an agreement concerning future employment.

The official or employee may not personally participate in a decision, approval, disapproval, recommendation, rendering of advice, investigation, inspection or other substantial exercise of non-ministerial administrative discretion involving a vendor with whom he/she is seeking employment or has an agreement concerning future employment.

How long is the exemption effective?

One year.

West Virginia Ethics Commission

210 BROOKS STREET, SUITE 300

CHARLESTON, WV 25301-1804

(304) 558-0664 - FAX (304) 558-2169

ethics@wv.gov www.ethics.wv.gov

Revised 10/19/2016